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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JOSEPH PARSONS,

Plaintiff,

v.

JENNIFER COVELLO,

Defendant.

CASE NO. 1:11-cv-00806-LJO-SKO

**ORDER REMANDING ACTION TO  
STANISLAUS COUNTY SUPERIOR  
COURT**

(Docket No. 1)

**ORDER DENYING AS MOOT  
DEFENDANT'S MOTION TO  
PROCEED IN FORMA PAUPERIS**

(Docket No. 2)

**I. INTRODUCTION**

On May 17, 2011, Defendant Jennifer Covello ("Defendant") filed a document entitled "NOTICE AND MOTION OF REMOVAL OF STATE COURT ACTION (STANISLAUS COUNTY SUPERIOR COURT) TO US DISTRICT COURT (EASTERN DISTRICT OF CALIFORNIA)" (the "May 17, 2011, Notice"). (Doc. No. 1.) The May 17, 2011, Notice alleges that the basis of removal is 28 U.S.C. § 1331 Federal Question Jurisdiction. On that same day, Defendant filed a motion to proceed without the prepayment of fees. (Doc. 2.)

For the reasons set forth below, Defendant's motion for removal is DENIED and the action is remanded to the Stanislaus Superior Court. As a result, Defendant's motion to proceed *in forma pauperis* is DENIED AS MOOT.

1 **II. DISCUSSION**

2 **A. Defendant's Motion for Removal is Denied and the Case is Remanded**

3 Title 28 of the United States Code, section 1441(a) provides that "any civil action brought  
4 in a State court of which the district courts of the United States have original jurisdiction, may be  
5 removed by the defendant or the defendants, to the district court of the United States for the district  
6 and division embracing the place where such action is pending." A district court has "a duty to  
7 establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties raised  
8 the issue or not." *United Investors Life Ins. Co. v. Waddell & Reed, Inc.*, 360 F.3d 960, 967 (9th Cir.  
9 2004). "If at any time prior to judgment it appears that the district court lacks subject matter  
10 jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). The removal statute is strictly  
11 construed against removal jurisdiction. *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d  
12 1102, 1107 (9th Cir. 2010); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083,  
13 1087 (9th Cir. 2009). The court presumes that a case lies outside the limited jurisdiction of the  
14 federal courts, and the burden of establishing the contrary rests upon the party asserting jurisdiction.  
15 *Geographic Expeditions*, 599 F.3d at 1106-07; *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042  
16 (9th Cir.2009).

17 The underlying complaint filed in the Stanislaus County Superior Court has not been  
18 provided to this court. Title 28 U.S.C. § 1446(a) provides that a copy of all pleadings served on the  
19 removing defendant in the state court action must be filed along the notice of removal. Because the  
20 complaint at issue has not been provided to this Court, Plaintiff has failed to comply with Section  
21 1446(a). As such, the Court is unable to identify the federal law at issue.

22 From the May 17, 2011, Notice, it appears that this action concerns the rental of real property  
23 and contractual obligations concerning that property.<sup>1</sup> Nothing in the May 17, 2011, Notice indicates  
24 that the underlying complaint contains claims concerning anything other than a rental agreement and  
25 Plaintiff's attempts to vacate Defendant from the property. The May 17, 2011, Notice states that  
26 third parties in the Stanislaus County Superior Court have violated Defendant's constitutional rights

27 \_\_\_\_\_  
28 <sup>1</sup> The Court notes that Defendant's motion purports to attach a copy of the contract as "Exhibit 1"; however,  
there was no exhibit attached to the submitted papers.

1 and Plaintiff has violated Defendant's rights under the Fair Housing Act. Removal cannot be based  
2 on a defense, counterclaim, cross-claim, or third party claim raising a federal question, whether filed  
3 in state or federal court. *See Vaden v. Discover Bank*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1262, 1272 (2009);  
4 *Hunter*, 582 F.3d at 1042-43; *Metro Ford Truck Sales, Inc. v. Ford Motor Co.*, 145 F.3d 320, 327  
5 (5th Cir. 1998); *Preciado v. Ocwen Loan Servicing*, No. CV 11-1487 CAS (VBKx), 2011 WL  
6 977819, at \*1 (C.D.Cal. Mar. 18, 2011); *Fed. Nat'l Mortg. Ass'n. v. Bridgeman*, No. 2:10-cv-02619  
7 JAM KJN PS, 2010 WL 5330499, at \*4 (E.D.Cal. Dec. 20, 2010). There is, therefore, no basis for  
8 federal jurisdiction to permit removal, and as such, this action is remanded to the Stanislaus County  
9 Superior Court.

10 **B. Defendant's Motion to Proceed In Forma Pauperis is Moot**

11 Defendant filed a motion to proceed without the prepayment of fees. (Doc. 2.) In light of  
12 the Court's finding that it lacks subject matter jurisdiction, Defendant's motion to proceed in *forma*  
13 *pauperis* is denied as moot.

14 **III. CONCLUSION**

15 In sum, the May 17, 2011, Notice provides no basis for federal jurisdiction, and the implied  
16 basis of federal jurisdiction is not a proper basis for removal. Accordingly, the Court HEREBY  
17 ORDERS THAT:

- 18 1. This action is REMANDED to the Stanislaus County Superior Court;
- 19 2. Defendant's motion to proceed in *forma pauperis* is DENIED AS MOOT; and
- 20 3. The Clerk of the Court is DIRECTED to serve a copy of this order on the Stanislaus  
21 County Superior Court.

22  
23  
24 IT IS SO ORDERED.

25 **Dated: May 25, 2011**

25 **/s/ Sheila K. Oberto**  
26 UNITED STATES MAGISTRATE JUDGE